

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**KATHLEEN LOPEZ,**  
**Plaintiff,**

**vs.**

**QUALITY DRIVE AWAY, INC.,  
FOREMOST TRANSPORT, INC., AND  
CHRISTOPHER CALDWELL,**  
**Defendants.**

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**Civil Action No. 5:19-cv-1204**

**JURY REQUESTED**

**DEFENDANTS', QUALITY DRIVE AWAY, INC., FOREMOST TRANSPORT, INC.,  
AND CHRISTOPHER CALDWELL, NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that Defendants, Quality Drive Away, Inc. (Quality Drive), Foremost Transport, Inc. (Foremost Transport), and Christopher Caldwell (Caldwell), file this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441 and 1446(a), and would show as follows:

**INTRODUCTION**

1. This is a personal injury case regarding a motor vehicle accident that occurred in San Antonio, Bexar County, Texas on or about January 23, 2019. On or about August 30, 2019, Plaintiff, Kathleen Lopez, filed Plaintiff's Original Petition in Cause No. 2019CI18167 in the 407th Judicial District Court of Bexar County, Texas, initiating a civil cause of action against Quality Drive, Foremost Transport, Christopher Caldwell, The Heil Company and Heil Environmental.<sup>1</sup> Plaintiff has since filed a Notice of Nonsuit as to Defendants The Heil Company and Heil Environmental after service but prior to their appearance in the case.<sup>2</sup>

2. Removal is based on diversity jurisdiction because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and there is complete diversity between

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<sup>1</sup> See Exhibit 1, *Plaintiff's Original Petition*.

<sup>2</sup> See Docket Sheet from Bexar County District Clerk's website attached hereto as Exhibit 3.

Plaintiff and Defendants Quality Drive, Foremost Transport, and Caldwell.

3. Plaintiff alleges negligence causes of action against Defendants as well as the doctrines of agency and respondeat superior as to Quality Drive and Foremost Transport for the actions of Caldwell.

4. Quality Drive and Foremost Transport were served with Plaintiff's Original Petition and Citation on September 9, 2019.<sup>3</sup> Caldwell received notice of the lawsuit on September 24, 2019 and made a general appearance in state court.<sup>4</sup>

5. Defendants now file this Notice of Removal based on the grounds asserted herein, and promptly upon the filing of same, are also filing a Notice of Filing Notice of Removal with the state court in which this case was previously pending.

### **GROUND FOR REMOVAL**

6. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a) because the parties involved are entities and citizen of different states, and the matter in controversy exceeds \$75,000.00, exclusive of interest and costs.

#### **A. Complete Diversity Exists Between the Parties.**

7. According to Plaintiff's Original Petition, at the time this action was commenced, Plaintiff was and still is, domiciled in Texas and is a citizen of the State of Texas.<sup>5</sup> In determining diversity jurisdiction, the state where someone establishes her domicile serves a dual function as her state of citizenship.<sup>6</sup> A person's state of domicile presumptively continues unless rebutted

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<sup>3</sup> See Exhibit 3.

<sup>4</sup> See Exhibits 2 and 3.

<sup>5</sup> See Exhibit 1, P. 2, § II, "Parties."

<sup>6</sup> *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564 (5th Cir. 2011).

with sufficient evidence of change.<sup>7</sup> “Evidence of a person’s place of residence . . . is prima facie proof of [her] domicile.”<sup>8</sup> Furthermore, once established, “[a] person’s state of domicile presumptively continues unless rebutted with sufficient evidence of change.”<sup>9</sup> Thus, for purposes of diversity of citizenship, Plaintiff is considered a Texas citizen.

8. At the time of filing of the lawsuit in state court and at the time the case was removed to this Court, Quality Drive was and is a Corporation in the State of Indiana whose primary place of business is in the State of Indiana.<sup>10</sup> The President/Registered Agent of Quality Drive is Bradley J. Hooley.<sup>11</sup> Bradley J. Hooley was and still is, domiciled in Indiana and is a citizen of the State of Indiana.<sup>12</sup> Accordingly, Quality Drive is not a citizen of the State of Texas for purposes of federal diversity jurisdiction.

9. At the time of filing of the lawsuit in state court and at the time the case was removed to this Court, Foremost Transport was and is a Corporation in the State of Indiana whose primary place of business is in the State of Indiana.<sup>13</sup> The President/Registered Agent of Foremost Transport is also Bradley J. Hooley.<sup>14</sup> Accordingly, Foremost Transport is not a citizen of the State of Texas for purposes of federal diversity jurisdiction.

10. Likewise, Christopher Caldwell is a resident and citizen of the State of Georgia as acknowledged by Plaintiff in her Original Petition.<sup>15</sup>

**B. The Amount in Controversy Exceeds \$75,000**

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (citations omitted).

<sup>9</sup> *Id.*

<sup>10</sup> See Business Information from the Indiana Secretary of State attached as Exhibit 4.

<sup>11</sup> See *id.*

<sup>12</sup> See Exhibits 1 and 4.

<sup>13</sup> See Business Information from the Indiana Secretary of State attached as Exhibit 5.

<sup>14</sup> See *id.*

<sup>15</sup> See Exhibit 1.

11. Additionally, the claims asserted by Plaintiff exceed \$75,000.00. Plaintiff's Original Petition specifically states that she seeks "that amount to be over \$200,000 but not more than \$1,000,000."<sup>16</sup> In addition, Plaintiff requested that the case be governed by a state court level 3 discovery control plan rather than a level 1 discovery control plan for expedited actions with amounts in controversy under \$100,000.00 pursuant to Rules 169 and 190.2 of the Texas Rules of Civil Procedure.<sup>17</sup>

### **VENUE**

12. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed action was pending, the 407<sup>th</sup> Judicial District Court of Bexar County, Texas, and a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this district.

### **PROCEDURAL REQUIREMENTS**

13. A complete copy of the record in the state court action is being requested and will be filed following receipt. Plaintiff's Original Petition and Defendants' Original Answers are attached hereto as Exhibits 1 and 2, respectively. Additionally, Defendants attach an *Index of Matters Being Filed* in this action.<sup>18</sup>

15. Pursuant to 28 U.S.C. §1446(b)(2), all current Defendants consent to the removal of this action.<sup>19</sup>

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<sup>16</sup> See Exhibit 1, ¶ 1.1.

<sup>17</sup> See *id.* at ¶ 1.2; TEX. R. CIV. PROC. 169; 190.2.

<sup>18</sup> See Exhibit 6.

<sup>19</sup> Because Plaintiff filed a nonsuit as to the Heil Company and Heil Environmental, it is unnecessary to obtain their consent. A nonsuit is effective as soon as the plaintiff files a motion for nonsuit or asks for one in open court. See *Epps v. Fowler*, 351 S.W.3d 862, 868 (Tex. 2011) ("A nonsuit terminates a case from 'the moment the motion is filed.'" (citations omitted)).

16. Pursuant to 28 U.S.C. §1446(d), promptly after Defendants file the original Notice of Removal, written notice of the filing will be given to Plaintiff's counsel.

17. Pursuant to 28 U.S.C. §1446(d), a true and correct copy of Defendants', Quality Drive Away, Inc., Foremost Transport, Inc. and Christopher Caldwell, Notice of Filing Notice of Removal will be filed with the Clerk of the 407<sup>th</sup> Judicial District Court of Bexar County, Texas, promptly after Defendant files this Notice.

18. The original Notice of Removal was filed within thirty (30) days of service of the citation and the Plaintiff's Original Petition upon the earliest served current Defendants, and is thus timely filed under 28 U.S.C. §1446(b).<sup>20</sup> There exists an actual and justiciable controversy between Plaintiff and Defendants, Quality Drive Away, Inc., Foremost Transport, Inc., and Christopher Caldwell, with regard to the legal issues herein and this controversy is within the jurisdiction of this Court.

### **CONCLUSION**

Defendants, Quality Drive Away, Inc., Foremost Transport, Inc., and Christopher Caldwell, respectfully request that the above-captioned action now pending in the 407<sup>th</sup> Judicial District Court of Bexar County, Texas be removed to the United States District Court for the Western District of Texas, San Antonio Division.

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<sup>20</sup> See Exhibits 1 and 3.

Respectfully submitted,

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ATTORNEY FOR DEFENDANTS  
**QUALITY DRIVE AWAY, INC., FOREMOST  
TRANSPORT, INC., AND CHRISTOPHER CALDWELL**

**CERTIFICATE OF SERVICE**

On October 8, 2019, the foregoing document was served in compliance with the Federal Rules of Civil Procedure by mail, email, hand delivery, fax, or CM/ECF electronic notice to the following:

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